

111TH CONGRESS  
1ST SESSION

# S. 1094

To amend the Internal Revenue Code of 1986 to provide for an energy carrier production tax credit, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 20, 2009

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for an energy carrier production tax credit, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Renewable Energy Al-  
5 ternative Production Act” or the “REAP Act”.

6 **SEC. 2. CREDIT FOR PRODUCTION OF RENEWABLE EN-**  
7 **ERGY.**

8 (a) IN GENERAL.—Section 45 of the Internal Rev-  
9 enue Code of 1986 is amended by adding at the end the  
10 following new subsection:

1       “(f) CREDIT ALLOWED FOR PRODUCTION OF NON-  
2 ELECTRIC ENERGY.—

3               “(1) IN GENERAL.—The credit allowed under  
4 subsection (a) shall be increased by an amount equal  
5 to the product of—

6                       “(A) the dollar amount determined under  
7 paragraph (2), and

8                       “(B) each million British thermal units  
9 (mmBtu) of qualified fuel which is—

10                               “(i) produced by the taxpayer—

11                                       “(I) from qualified energy re-  
12 sources, and

13                                       “(II) at any facility during the  
14 10-year period beginning on the date  
15 such facility was placed in service,

16                               “(ii) not used for the production of  
17 electricity, and

18                               “(iii) sold by the taxpayer to an unre-  
19 lated person during the taxable year.

20               “(2) DOLLAR AMOUNT.—The dollar amount de-  
21 termined under this paragraph shall be the amount  
22 determined by the Secretary to be the equivalent, ex-  
23 pressed in British thermal units, of the credit al-  
24 lowed under subsection (a) for 1 kilowatt hour of  
25 electricity.

1           “(3) REDUCTION FOR GRANTS, TAX EXEMPT  
2           BONDS, SUBSIDIZED ENERGY FINANCING, AND  
3           OTHER CREDITS.—Rules similar to the rules of sub-  
4           section (b)(3) shall apply for purposes of paragraph  
5           (1).

6           “(4) DEFINITIONS AND SPECIAL RULES.—For  
7           purposes of this subsection—

8                   “(A) QUALIFIED FUEL.—The term ‘quali-  
9                   fied fuel’ means an energy product which is  
10                  produced, extracted, converted, or synthesized  
11                  from a qualified energy resource through a con-  
12                  trolled process, including pyrolysis, electrolysis,  
13                  and anaerobic digestion, which results in a  
14                  product consisting of methane, synthesis gas,  
15                  hydrogen, steam, manufactured cellulosic fuels,  
16                  or any other form of energy provided under reg-  
17                  ulations by the Secretary and which is used  
18                  solely as a source of energy.

19                   “(B) ALLOCATION OF CREDIT TO PATRONS  
20                  OF AGRICULTURAL COOPERATIVES.—Rules  
21                  similar to the rules of subsection (e)(11) shall  
22                  apply for purposes of paragraph (1).”.

23           (b) CONFORMING AMENDMENTS.—

1 (1) The heading for section 45 of the Internal  
 2 Revenue Code of 1986 is amended by striking  
 3 “**ELECTRICITY**” and inserting “**ENERGY**”.

4 (2) The table of sections for subpart D of part  
 5 IV of subchapter A of chapter 1 of such Code is  
 6 amended by striking “Electricity” in the item relat-  
 7 ing to section 45 and inserting “Energy”.

8 (c) EFFECTIVE DATE.—The amendments made by  
 9 this section shall apply to taxable years beginning after  
 10 the date of the enactment of this Act.

11 **SEC. 3. ENERGY CREDIT FOR ONSITE RENEWABLE NON-**  
 12 **ELECTRIC ENERGY PRODUCTION FACILITIES.**

13 (a) CREDIT ALLOWED.—Clause (i) of section  
 14 48(a)(2)(A) of the Internal Revenue Code of 1986 is  
 15 amended—

16 (1) by striking “and” at the end of subclause  
 17 (III), and

18 (2) by adding at the end the following new sub-  
 19 clause:

20 “(V) qualified onsite renewable  
 21 non-electric energy production prop-  
 22 erty,”.

23 (b) QUALIFIED ONSITE RENEWABLE NON-ELECTRIC  
 24 ENERGY PRODUCTION PROPERTY.—Subsection (c) of sec-

1 tion 48 of the Internal Revenue Code of 1986 is amended  
2 by adding at the end the following new paragraph:

3 “(5) QUALIFIED ONSITE RENEWABLE NON-  
4 ELECTRIC ENERGY PRODUCTION PROPERTY.—

5 “(A) IN GENERAL.—The term ‘qualified  
6 onsite renewable non-electric energy production  
7 property’ means property which produces quali-  
8 fied fuel—

9 “(i) from qualified energy resources,

10 “(ii) not used for the production of  
11 electricity, and

12 “(iii) used primarily on the same site  
13 where the production is located to replace  
14 an equivalent amount of non-renewable  
15 fuel (determined based on the number of  
16 British thermal units of non-renewable fuel  
17 consumed by the taxpayer in the prior tax-  
18 able year) or to provide energy primarily  
19 on such site for a use that did not exist  
20 prior to the later of the date of the enact-  
21 ment of this paragraph or the date such  
22 property was placed in service.

23 “(B) DEFINITIONS.—For purposes of this  
24 paragraph—

1           “(i) QUALIFIED FUEL.—The term  
2           ‘qualified fuel’ means an energy product  
3           which is produced, extracted, converted, or  
4           synthesized from a qualified energy re-  
5           source through a controlled process, in-  
6           cluding pyrolysis, electrolysis, and anaer-  
7           obic digestion, which results in a product  
8           consisting of methane, synthesis gas, hy-  
9           drogen, steam, manufactured cellulosic  
10          fuels, or any other form of energy provided  
11          under regulations by the Secretary and  
12          which is used solely as a source of energy.

13          “(ii) QUALIFIED ENERGY RE-  
14          SOURCES.—The term ‘qualified energy re-  
15          sources’ has the meaning given such term  
16          by paragraph (1) of section 45(c).

17          “(iii) TERMINATION.—The term  
18          ‘qualified onsite renewable non-electric en-  
19          ergy production property’ shall not include  
20          any property for any period after the date  
21          which is 10 years after the date of the en-  
22          actment of the Renewable Energy Alter-  
23          native Production Act.”.

24          (c) EFFECTIVE DATE.—The amendments made by  
25          this section shall apply to periods after the date of the

1 enactment of this Act, under rules similar to the rules of  
2 section 48(m) of the Internal Revenue Code of 1986 (as  
3 in effect on the day before the date of the enactment of  
4 the Revenue Reconciliation Act of 1990).

5 **SEC. 4. RENEWABLE NON-ELECTRIC ENERGY PRODUCTION**  
6 **FACILITIES ELIGIBLE FOR NEW CLEAN RE-**  
7 **NEWABLE ENERGY BONDS.**

8 (a) IN GENERAL.—Paragraph (1) of section 54C(d)  
9 of the Internal Revenue Code of 1986 is amended to read  
10 as follows:

11 “(1) QUALIFIED RENEWABLE ENERGY FACIL-  
12 ITY.—The term ‘qualified renewable energy facility’  
13 means a facility which is—

14 “(A)(i) a qualified facility (as determined  
15 under section 45(d) without regard to para-  
16 graphs (8) and (10) thereof and to any placed  
17 in service date), or

18 “(ii) a facility which produces qualified  
19 fuel (as defined in section 45(f)(4)(A)) which is  
20 derived from qualified energy resources (within  
21 the meaning of section 45(f)(4)(B)) and not  
22 used for the production of electricity, and

23 “(B) owned by a public power provider, a  
24 governmental body, or a cooperative electric  
25 company.”.

1           (b) **EFFECTIVE DATE.**—The amendment made by  
2 this section shall apply to obligations issued after the date  
3 of the enactment of this Act.

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